



M. G. Varner  
Vice President

October 8, 1998

Mr. William Yellowtail  
Regional Administrator  
U.S. Environmental Protection Agency - Region VIII  
999 18th Street - Suite 500  
Denver, CO 80202

Re: Vasquez Boulevard/I-70 Site, Denver, Colorado

Dear Mr. Yellowtail:

I am writing to you to express the concerns of ASARCO Incorporated with respect to the area of north Denver known as the "Vasquez Boulevard/I-70 Site". We are concerned that Region VIII may not be following the procedures of the National Contingency Plan (NCP) with respect to risk management decisions.

Donald Robbins of Asarco has previously spoken with Max Dodson about the status of EPA action at the site. It is our understanding that the pre-listing package for the site has not been conveyed to the state of Colorado, because the city of Denver and the state wish to explore alternatives to listing the site on the National Priorities List. While we recognize that the state and EPA are required by CERCLA to confer with respect to listing decisions, the consultation process is not supposed to involve setting action levels for remediation in advance of the process set out in the NCP for data collection, information gathering, and risk assessment. The company is extremely concerned when we repeatedly hear statements from EPA and state officials that the action levels set in the state consent decree for cleanup of the neighborhood around the Globe Smelter site will be adopted by EPA at the Vasquez Boulevard site. EPA's work at the Vasquez Boulevard site is just beginning, and any decisions about action levels are premature. No risk assessment, remedial investigation, feasibility study or the accompanying public comment process has taken place. EPA has not even sent out section 104(e) requests for information to potentially involved parties.

William Yellowtail

October 8, 1998

Page 2

In any event, the state consent decree action levels are not ARARs with which an EPA action must conform. The state's action levels were based on a risk assessment that was performed approximately ten years ago using outdated models and information. Further, there is no technical basis for applying the state action levels for Globe to the Vasquez Boulevard site since detailed air modeling and extensive sampling have demonstrated that metals in area soils are not attributable to air emissions from the Globe Plant. Metals concentrations do not show a pattern of decreasing levels with distance from the Globe Plant, as would be expected if the metals were dispersed from air emissions from the plant. Instead, elevated arsenic levels do not appear to follow any discernible pattern. The data simply do not support an assumption that all, or even a significant amount, of the metals in the area can be traced back to the Globe Plant.

The information currently available about potential sources of metals to soils in the Vasquez Boulevard site indicates that the site will pose difficult technical and legal issues with respect to determining sources and allocating liability for remediation, and that a significant "orphan share" of liability is likely. The area may have been impacted by two long-defunct facilities, the Argo and Omaha-Grant Smelters. The Argo Smelter has no viable successors to its owners or operators. The Omaha-Grant Smelter was owned many years ago by Asarco but in more recent decades by the city and county of Denver. Further, there is substantial evidence indicating that arsenic in many area yards is due to the historical application of pesticides and/or herbicides by homeowners, and not to smelting impacts. Arsenic trioxide was also manufactured at the Rocky Mountain Arsenal. Lead may have come from a number of typical urban sources. Given these complicated factual issues, it is crucial that NCP procedures are followed in making remedial action decisions.

As you know, Asarco has worked cooperatively with Region VIII within the context of the NCP at other sites to devise site-specific risk management measures, and is prepared to do so at the Vasquez Boulevard site. We understand that EPA has made no decisions at this point about which entities will receive potentially responsible party (PRP) notice letters. The evidence does not indicate that the site has been impacted by releases from the Globe Plant and it is not clear what potential impacts, if any, exist from the Omaha-Grant Smelter. If the procedures and actions taken by EPA with respect to action levels and allocation of liability at the Vasquez Boulevard site are not consistent with the NCP, however, Asarco will not be in a position to participate voluntarily in any remediation, even as a PRP with a minority share.

William Yellowtail

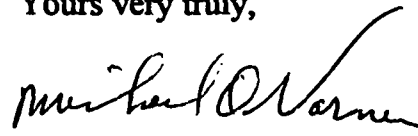
October 8, 1998

Page 3

We understand from the informational meeting held by EPA on September 25, 1998, that a site-specific risk assessment is being performed for the Vasquez Boulevard/I-70 Site. Risk management decisions should be based on that work and site characterization information, not on political considerations or the state's decisions with respect to the Globe Plant.

I am available to talk with you at (212) 510-2016 or in person at any time. I look forward to hearing from you about this issue.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Michael O. Varner".

MICHAEL O. VARNER

cc: Max Dodson  
Bonita Lavelle  
Robert Novotny  
Robert Little  
Donald Robbins  
Robert Ferri